

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF JUNE 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION No.1885/1992.

BETWEEN :-

M/s.Poonam Trading Company,
Merchants,
Pavagada Road,
Y.N.Hosakote,
Tumkur Dist.

by its Proprietor,
Sri.Jogaram, Major.

...Petitioner.

(By Sri.B.V.Katageri, Adv.,)
Sri.S.S.Angadi.

A N D :

The Asst.Commercial Tax
Officer, (Intelligence),
TUMKUR.

...Respondent.

(By Sri.K.M.Shivayogiswamy, Addl.G.A.)

This writ petition filed praying to direct the Respondent to issue refund of collection of compounding fee of Rs.5,000/- by the petitioner, etc.,

This writ petition coming on for hearing this day, the Court made the following order :

...2/-

373

O R D E R

Two years after the petitioner made a statement before the Assistant Commercial Tax Officer (Intelligence) Tumkur, admitting discrepancies between the actual stock in hand and the Books of Account maintained by him, and after he offered to compound the offence and paid the compounding fee, the petitioner has come up with the present writ petition. The grievance primarily is that the Officer concerned had no jurisdiction to either record a statement or to compound the violation no matter the offer to do so had come from the Assessee himself.

2. Heard.

3. In so far as the power to record a statement is concerned I see no merit in the submission that the Officer ~~could~~/could not do so, Sec.28 specifically empowers the Officer concerned, to demand the production of Account Books and other documents and furnishing of any information relating to the stocks of goods or purchases, sales and deliveries thereof by the Dealer. The information referred to in Sec.28 can be put down in writing by the Officer concerned, and got signed or verified by the person furnishing the same. Sec.28 of the Act, does not in my opinion forbid any such

...3

[Handwritten signature]

374

procedure let alone render illegal the consequent action taken by the Officer on the basis thereof.

4. There is no merit even in the second limb of the petitioner's case namely that the compounding of the violations which were admitted by the Assessee would be impermissible even when the Assessee had made a request for composition. It is not in dispute that after the statement of the Assessee was recorded, the assessee made an application offering to compound the violation on payment of a sum of Rs.5,000/-. This offer was accepted by the Officer concerned and the violations noticed as a result of the inspection conducted by him compounded. The Assessee by reason of the payment of the compounding fee escaped or at least secured a reprieve from possible prosecution proceedings against him. The argument that compounding ought to have been preceded by a show-cause notice does not appeal to me. I can understand a show-cause notice being insisted upon in a situation where the officer makes an offer to the Assessee in which event, the Assessee is at liberty to accept or decline the same. But I see no rationale behind the issue of a show-cause notice in a case where the assessee comes forward with an offer to compound ~~in the following manner~~

the offences. The issue of a show-cause notice in the later of the two situation would be an exercise in futility. I therefore see no justification for insistence upon a show-cause notice even when the assessee is ready and willing to compound the violation.

5. It was lastly argued that compounding-fee collected by the Officer concerned was in excess of the maximum permissible u/s.31. There are three distinct reasons why that submission must fail. Firstly because the petitioner had himself offered to pay the amount of Rs.5,000/- towards compounding fee. It is not therefore open to him to turn round and say that the amount offered and received was ^{in excess of} ~~in excess of~~ ~~more than~~ than what was permissible under the provisions of Sec.31. Secondly, the petitioner slept over the matter for nearly two years after he made the offer and secured an immunity against prosecution. If the petitioner's version was correct that the entire process starting with the recording of the settlement and ending with the payment of compounding fee was vitiated by undue influence and duress, there is no reason why he should have slept over the matter for two years before making a grievance. Assuming

376

- 5 -

therefore that the amount offered by the petitioner and accepted by the Officer concerned was in excess of what was permissible under Sec.31, I see no justification for interfering with any such receipt or payment at this distant point of time at the instance of a person who is himself responsible for having created such a situation. Having benefitted from the proceedings conducted on the 23rd of December, 1989, I am not inclined to permit the petitioner to turn round and take the benefit of a refund in exercise of the extraordinary writ jurisdiction of this Court. Thirdly the amount of compounding fee chargeable under Sec.31 depends upon the nature and the gravity of the offence. It is not as though a flat rate of Rs.1000/- is applicable for all kind of violations under the Act, so that any payment in excess of that amount could be said to be legally impermissible.

6. There is no merit in this writ petition which fails with costs assessed at Rs.1500/-.

Sd/-
JUDGE

Abid/-
Jan/-

